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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re M.B., a Person Coming Under the
Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

EDGAR M. et al.,

Defendants and Appellants.

D056013

(Super. Ct. No. EJ2845E)

APPEALS from a judgment of the Superior Court of San Diego County, Gary M.
Bubis, Judge. Affirmed.

Edgar M. appeals a judgment terminating his parental rights to his minor daughter,
M.B., under Welfare and Institutions Code¹ section 366.26. Edgar argues the evidence
was insufficient to support the court's findings that the beneficial parent-child relationship

¹ Statutory references are to the Welfare and Institutions Code.

exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude termination of his parental rights. Maria C., the minor's mother, joins in Edgar's argument. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

In January 2008 the San Diego County Health and Human Services Agency (the Agency) filed a petition on behalf of newborn M.B. under section 300, subdivision (b). The petition alleged M.B. was at risk of suffering harm based on Maria's long-standing mental health problems. Maria also had four other children who had been removed from her care because of her mental health concerns.

After M.B. was born, the Agency social workers met with Edgar and Maria and discussed the importance of not allowing M.B. to be alone with Maria. The Agency provided the family with a safety plan. Edgar and Maria lived with relatives and claimed to be ready to take care of M.B.

Maria, however, did not comply with the safety plan. Shortly after meeting with the social worker, she walked out of her relative's home with M.B. in the middle of the night. Edgar was not at home when this incident occurred. After the incident took place, Edgar agreed Maria posed a risk to M.B. The court held a detention hearing and detained the minor in the care of relatives. The court ordered supervised visits for Edgar and Maria.

The Agency submitted a jurisdiction and disposition report. The Agency social worker acknowledged that Edgar was a nonoffending parent. Edgar expressed a strong interest in wanting to reunify with M.B. However, Edgar agreed that because he worked

long hours, M.B. would be better off placed with a relative. The social worker recommended supervised visits for Edgar. He was instructed not to supervise Maria's visits with M.B.

At the jurisdiction and disposition hearing, the court took jurisdiction over M.B. and removed her from Maria's care. The court ordered M.B. placed with a relative and further ordered the parents to comply with services. The court granted the parents supervised visits with M.B.

In July 2008 the Agency filed a petition under section 387. The petition alleged M.B.'s relatives were no longer able to care for her and a new placement was required. The Agency did not recommend placing M.B. with Edgar because he had not progressed to overnight visits, and there were reports that he had allowed Maria to have unsupervised contact with M.B.

In a six-month report, the social worker recommended additional services for Edgar. Edgar continued to express his desire to reunify with M.B. Edgar had been complying with services and had progressed to unsupervised visits. However, the Agency learned Edgar permitted Maria to look after M.B. while he was at work. Edgar explained that he left M.B. with Maria because he believed Maria was a good caregiver. He went on to make reassurances that he would not allow Maria to be left unsupervised with M.B. in the future. Edgar also represented that he had separated from Maria.

In an addendum report to the six-month review report, the social worker reported having concerns about Edgar's continued relationship with Maria. Edgar represented that he was separated from Maria. However, when the social worker met with Edgar, Maria

attended the meeting with him. The couple left the meeting together "arm in arm."

Allegations of drug use against Edgar had also surfaced. Edgar agreed to participate in random drug testing.

At the six-month review hearing, Edgar was informed that his visits with M.B. were now supervised because Maria had not made substantive progress with her services and she posed a continued risk to M.B. The court explained to Edgar that he had a responsibility to protect M.B. The court ordered an additional six months of services for Edgar. The court granted the social worker the discretion to allow for unsupervised visits between Edgar and M.B. The court further granted the Agency's section 387 petition and ordered that M.B. be placed in foster care.

In December 2008 the court granted the Agency's request to provide Edgar a 60-day trial visit with M.B. In a 12-month review report, the social worker recommended an additional six months of services for Edgar. Edgar tested negative for drug use and participated in services. He denied having any contact with Maria, and Maria had moved to a new home. Edgar's therapist reported that Edgar grasped the seriousness of Maria's condition and understood the need for him to protect M.B.

The social worker noted that during this reporting period, Edgar started to participate in unsupervised visits. The visits returned to supervised after reports surfaced that Edgar had participated in overnight visits with M.B. at a relative's home and that Maria was present. The visits eventually returned to unsupervised and it was expected that overnight visits would recommence.

M.B. continued to remain placed in foster care. M.B.'s foster mother noted that Edgar enjoyed visits with his daughter. However, the foster mother had some concerns that Edgar was not always prepared for his visits with M.B. He did not always bring toys or a diaper bag. When it came time for M.B. to attend overnight visits, M.B. would cry when leaving her foster mother. M.B. would stop crying after a reasonable amount of time.

In March 2009 the social worker changed her recommendation of granting additional services to Edgar to terminating his services and scheduling a section 366.26 hearing. During an overnight visit, Edgar permitted Maria to have contact with M.B. The social worker contacted Maria and Maria admitted that she had watched M.B. with Edgar. She also reported that Edgar wanted to recommence their relationship. Additional investigation confirmed that Edgar had left M.B. alone in Maria's care. M.B.'s foster mother also reported that when M.B. would return from overnight visits, she was exhausted and suffered from diaper rashes. She would also smell like cigarette smoke and suffer from stomach problems. The social worker met with Edgar and spoke to him about the recommendation to terminate services. Edgar agreed that he was at fault and accepted responsibility for leaving M.B. with Maria.

In a section 366.26 assessment report, the social worker assessed M.B. as adoptable. She was a young, healthy baby with no developmental concerns. She was living in an approved adoptive home and had been in her current placement for all but the first seven months of her life. In addition to the approved adoptive home, 47 other families were interested in adopting a child like M.B.

The social worker reported Edgar consistently visited M.B. during the dependency period. Edgar generally behaved appropriately during visits. He would display affection toward M.B. and would play with her. He did not bring toys or food to the visits. At the end of visits, M.B. would separate easily from Edgar. The foster mother would encourage M.B. to give Edgar a kiss goodbye. During some visits, M.B. would reach over to her foster mother by holding her arms out.

The social worker opined that the benefits of adoption outweighed the detriment of terminating parental rights. Edgar participated in services but he ignored court orders and continued to leave the minor in Maria's care. He was well aware that Maria was not able to safely care for M.B. Edgar regularly visited M.B. but he had not been involved in ensuring that M.B.'s everyday needs were met. During visits, he did not bring food or snacks for M.B. His interaction with M.B. during visits was minimal and sometimes he would not say more than a few words to M.B. during an hour long visit. Often during visits, M.B. looked to her caregiver and it was the caregiver who would fulfill basic parenting needs such as changing a diaper or checking to see if M.B. had been hurt while playing. The social worker believed that maintaining parental rights would not outweigh the permanency and stability M.B. would receive under a permanent plan of adoption.

At an initial section 366.26 hearing, the foster mother filed a petition seeking de facto parent status. Edgar and Maria objected but later withdrew the objection. The court granted the foster mother's petition.

The court held a contested section 366.26 hearing and the Agency's reports were admitted in evidence without objection. Edgar presented no evidence. After hearing

argument from all parties, the court found M.B. to be adoptable and that none of the exceptions under section 366.26, subdivision (c)(1) applied. The court terminated parental rights.

DISCUSSION

Edgar challenges the sufficiency of the evidence to support the court's finding the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude terminating his parental rights. He asserts he maintained regular contact with M.B. and shared a significant relationship with her. Maria joins in Edgar's argument.²

A

We review the judgment for substantial evidence. (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 576 (*Autumn H.*)). If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. We do not consider the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if there is substantial evidence supporting a contrary finding. (*In re Baby Boy L.* (1994) 24 Cal.App.4th 596, 610.) The parent has the burden of showing there is no evidence of a sufficiently substantial nature to support the finding or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

² Maria asserts her parental rights should be reinstated in the event this court reinstates Edgar's parental rights.

"Adoption, where possible, is the permanent plan preferred by the Legislature."
(*Autumn H.*, *supra*, 27 Cal.App.4th at p. 573.) If the court finds a child cannot be returned to his or her parent and is likely to be adopted if parental rights are terminated, it must select adoption as the permanent plan unless it finds termination of parental rights would be detrimental to the child under one of six specified exceptions. (§ 366.26, subd. (c)(1)(B)(i)-(vi); *In re Erik P.* (2002) 104 Cal.App.4th 395, 401.)

Section 366.26, subdivision (c)(1)(B)(i), provides an exception to the adoption preference if termination of parental rights would be detrimental to the child because "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." We have interpreted the phrase "benefit from continuing the [parent-child] relationship" to refer to a parent-child relationship that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575; accord *In re Zachary G.* (1999) 77 Cal.App.4th 799, 811.)

To meet the burden of proof for this statutory exception, the parent must show more than frequent and loving contact, an emotional bond with the child or pleasant

visits. (*In re Derek W.* (1999) 73 Cal.App.4th 823, 827.) "Interaction between natural parent and child will always confer some incidental benefit to the child. . . . The relationship arises from day-to-day interaction, companionship and shared experiences." (*Autumn H., supra*, 27 Cal.App.4th at p. 575.) Although day-to-day contact is not required, it is typical in a parent-child relationship. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 51.) The parent must show he or she occupies a parental role in the child's life, resulting in a positive and emotional attachment from child to parent. (*Autumn H., supra*, at p. 575; *In re Elizabeth M.* (1997) 52 Cal.App.4th 318, 324.)

B

The Agency concedes Edgar regularly visited M.B. Maria did not participate in regular visits with M.B. Thus, we examine only whether substantial evidence supports the court's finding Edgar did not have a beneficial parent-child relationship with M.B. We acknowledge that Edgar loves M.B. He displayed affection toward her, and their visits were appropriate. However, Edgar did not have a parental role in M.B.'s life. During the proceedings, he had difficulty providing M.B. with a safe and stable home environment when he continued to allow Maria to have contact with M.B. Further, the social worker observed Edgar spoke very little to M.B. during supervised visits. He did not bring M.B. food or toys. M.B. did not show signs of distress at the end of visit and instead, she was happy to return to her caregiver. M.B. often looked to her caregiver during visits and the caregiver had to prompt her to hug or kiss Edgar at the end of visits. There was no evidence of a "significant, positive, emotional attachment" from M.B. to Edgar such that terminating the parent-child relationship would result in great detriment

to M.B. (*Autumn H.*, *supra*, 27 Cal.App.4th at p. 575.) Where, as here, the biological parent does not fulfill a parental role, "the child should be given every opportunity to bond with an individual who will assume the role of a parent." (*In re Brittany C.* (1999) 76 Cal.App.4th 847, 854.)

Further, Edgar did not show that maintaining the relationship with M.B. outweighed the benefits of adoption. M.B. is thriving in the home of her caregiver, who has provided her with the only stable and safe environment she has ever known. Outside of M.B.'s placement with her caregiver, the reunification period was full of instability for her. Edgar attempted services but he did not appreciate the risk and problems presented by leaving M.B. with Maria even though he had received numerous warnings and lost his unsupervised visits. In the social worker's opinion, the permanency and stability that adoption would bring M.B. outweighed the benefits of maintaining M.B.'s relationship with Edgar. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 191 [child's interest in stable and permanent home is paramount once a parent's interest in reunification is no longer at issue].) "The reality is that childhood is brief; it does not wait while a parent rehabilitates himself or herself. The nurturing required must be given by someone, at the time the child needs it, not when the parent is ready to give it." (*In re Debra M.* (1987) 189 Cal.App.3d 1032, 1038.) The court was required to, and did, weigh the strength and quality of the parent-child relationship, and the detriment involved in terminating it, against the potential benefits of an adoptive home for M.B. We cannot reweigh the evidence or substitute our judgment for that of the juvenile court. (*In re Casey D.*, *supra*,

70 Cal.App.4th at p. 53.) Substantial evidence supports the court's finding the beneficial parent-child relationship exception did not apply to preclude terminating parental rights.

DISPOSITION

The judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

McINTYRE, J.